

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF INDIANA  
FORT WAYNE DIVISION**

UNITED STATES OF AMERICA

v.

GARY McCALEB

CAUSE NO.: 1:19-CR-21-2-TLS

**ORDER**

This matter is before the Court on Defendant Gary McCaleb’s April 16, 2019 Motion to Suppress Identification Evidence [ECF No. 50]. The Defendant asks that the Court “suppress[] any and all evidence relating to the pretrial identification of Defendant and any subsequent in-court identification of Defendant” because, he alleges, the police employed a “one-on-one show up” identification procedure, which the Defendant argues was “unduly suggestive” and “conducive to irreparable mistaken identification,” thus denying the Defendant due process. (Def.’s Mot. to Suppress, ECF No. 50, ¶¶ 1–2.)

The Government filed a Response [ECF No. 57] on April 22, 2019. The Government states that no such show up identification was conducted; that instead, a photo array was used with one of the witnesses, who was unable to identify the Defendant from that array. *See* (Gov’t’s Resp. to Def.’s Mot., ECF No. 57, ¶¶ 7–10.)

The Defendant filed his Reply [ECF No. 67] on April 29, 2019. In his reply, the Defendant states that “no . . . identification procedures [other than the photo array] were employed prior to the Indictment.” (Def’s Reply, ECF No. 67, ¶ 5). Instead, Defendant explains that his Motion was directed toward “further pretrial presentment of photo arrays or other devices to develop identification testimony for use at trial.” *Id.* at ¶ 6.)

As the Defendant has identified no evidence which he requests that the Court suppress, the Motion to Suppress is DENIED with leave to refile if circumstances warrant. To the extent the Motion seeks to exclude trial testimony, such a request should be raised in a Motion in Limine in advance of trial.

### **CONCLUSION**

For the reasons stated above, the Court DENIES the Defendant's Motion to Suppress [ECF No. 50].

SO ORDERED on May 17, 2019

s/ Theresa L. Springmann  
CHIEF JUDGE THERESA L. SPRINGMANN  
UNITED STATES DISTRICT COURT